

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

March 7, 2001

<b>IN RE:</b>	)	
	)	
<b>JOINT APPLICATION OF THE CITY OF</b>	)	<b>DOCKET NO. 00-00537</b>
<b>KINGSPORT AND TENGASCO PIPELINE</b>	)	
<b>CORPORATION FOR APPROVAL OF</b>	)	
<b>CITY RESOLUTION AND CITY</b>	)	
<b>ORDINANCE</b>	)	

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**INITIAL ORDER APPROVING JOINT STIPULATION,  
CITY OF KINGSPORT'S RESOLUTION, AS AMENDED, AND GRANT OF A  
PRIVILEGE OR FRANCHISE TO TENGASCO PIPELINE CORPORATION  
PURSUANT TO TENN. CODE ANN. § 65-4-107**

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This matter is before the Tennessee Regulatory Authority ("Authority" or "TRA") for consideration of the Amended Joint Application of the City of Kingsport ("Kingsport") and Tengasco Pipeline Corporation ("Tengasco" or "TPC") for approval of the franchise or privilege granted to Tengasco by Kingsport in the Kingsport Resolution. On December 28, 2000, a public Hearing was held before Hearing Officer J. Richard Collier, for the purpose of allowing Tengasco and Kingsport to introduce evidence in support of their request for approval of: the Joint Stipulation between Tengasco, Kingsport and United Cities Gas Company ("United Cities"); the Kingsport Resolution (also "City Resolution"), as amended by the Joint Stipulation; and the privilege or franchise for natural gas service granted by Kingsport to Tengasco.

After careful consideration of the Amended Joint Application, the Joint Stipulation and the entire record in this matter, including testimony from the Applicants, the Hearing Officer approves the Joint Stipulation, the Kingsport Resolution, as amended, and the privilege or franchise granted to Tengasco by Kingsport.

## **Background**

On March 9, 1998, Tensasco filed with the Authority an application for a certificate of public convenience and necessity ("CCN"), pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*, to provide intrastate natural gas services in Hawkins, Claiborne and Hancock Counties, Tennessee. After a hearing was conducted on June 30, 1998 and July 7, 1998, the Authority approved Tensasco's application and granted a CCN to Tensasco to serve those counties specified in the application. The Authority's Order granting the CCN, issued on July 21, 1998, expressly stated that its terms "shall be construed subject to Tenn. Code Ann. § 7-82-301 *et seq.* and other applicable Tennessee laws and shall not be construed to contravene any statutory rights of any municipality or utility district."<sup>1</sup>

On July 30, 1998, the Claiborne County Utility District and the Natural Gas Utility District Hawkins County filed a petition to re-open Docket No. 98-00156 for the purpose of reconsideration of the Authority's July 21, 1998 Order. The petition was granted and the Authority conducted a hearing on December 15 and 16, 1998. On April 20, 1999, the Authority determined that the July 21, 1998 Order granting a CCN to Tensasco did not violate the restrictions on service within established utility districts as set forth in Tenn. Code Ann. § 7-82-301. In an Order issued on May 18, 1999, the Authority reaffirmed its July 21, 1998 Order and expressly stated, at paragraphs 3 and 4:

The terms of this Order and the July 21, 1998, Order Granting Certificate of Public Convenience and Necessity shall be construed subject to Tenn. Code Ann. § 7-82-301 *et seq.* and other applicable Tennessee laws and shall not be construed to contravene any statutory rights of any municipality or utility district. (Paragraph 3)

Neither the July 21, 1998, Order Granting Certificate of Public Convenience and Necessity, nor this Order, grant to TPC the authority to transport, distribute, or otherwise deliver natural gas to commercial or

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<sup>1</sup> *Order Granting Certificate of Public Convenience and Necessity*, TRA Docket No. 98-00156, July 21, 1998, p. 4.

industrial end-users in areas serviced by utility districts within the counties of Hancock, Hawkins, and Claiborne. (Paragraph 4)<sup>2</sup>

In 1999, the Tennessee General Assembly amended Tenn. Code Ann. § 65-28-103 to permit transportation of natural gas from Tennessee wells in specific counties to end-users in Tennessee. Of relevance to this proceeding is the General Assembly's addition of subsection (b)(1) to Tenn. Code Ann. § 65-28-103, which provides as follows:

(b)(1) As a pilot project through the end of the year 2001, and notwithstanding any state or local law to the contrary, any intrastate natural gas pipeline corporation, subject to regulation by the Tennessee regulatory authority as a public utility, may transport natural gas to end users in Tennessee only if such natural gas is produced from Tennessee wells located in any county contained within the second, fourth, fifth, sixth, seventh or twelfth [sic] senatorial districts, and/or the smallest county by population located in the fifteenth senatorial district, as these districts exist on June 17, 1999, and only if the end users of such natural gas are located in the above referenced counties. Such intrastate natural gas pipeline corporations shall not transport intrastate natural gas to end users that are served by a municipal utility or by a utility district or within a utility district's chartered service area on June 17, 1999, unless:

(A) The end user has been served by an interstate pipeline; or

(B) At the option of the utility district or municipal utility, such intrastate natural gas pipeline or end user assumes any contractual obligation of the utility district or municipal utility to an interstate natural gas pipeline incurred on behalf of such end user which remains after termination of service by such end user prior to the end of the term of the contract, tariff or other arrangement pursuant to which the end user receives service.

This amendment became effective on June 17, 1999.

### **Travel of this Case**

On June 22, 2000, Kingsport and Tensasco (collectively "the Applicants") filed a *Joint Application of the City of Kingsport and Tensasco Pipeline Corporation for Approval of City Resolution and City Ordinance* ("Joint Application"). The City Resolution, which was passed by the Mayor and Board of Aldermen of the City of Kingsport on May 2, 2000, states that the public

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<sup>2</sup> *Order Affirming July 21, 1998, Order Granting Certificate of Public Convenience and Necessity*, TRA Docket No. 98-00156, May 18, 1999, pp. 8-9.

necessity requires that there be a competing gas pipeline company within the City of Kingsport and provides that Tensasco construct such facilities. The City Ordinance, which was enacted by Kingsport on June 6, 2000, authorizes execution of a non-exclusive franchise agreement between Kingsport and Tensasco that will permit Tensasco to provide natural gas service within the City of Kingsport or through the City of Kingsport to end users outside the corporate boundaries of Kingsport. The Joint Application sought approval by the Authority of the City Resolution and City Ordinance. The Joint Application further stated:

Upon approval of the Resolution and Ordinance as requested hereby, TPC moves pursuant to TCA Section 65-4-207 the TRA grant to TPC without further hearing, a certificate of public convenience and necessity to provide intrastate natural gas service in Sullivan County, Tennessee in which the City of Kingsport is located.<sup>3</sup>

On July 5, 2000, United Cities filed a *Petition to Intervene and Application for Public Hearing* seeking intervention in this docket as an interested party pursuant to Tenn. Code Ann. § 4-5-310 and requesting that a public hearing be held pursuant to Tenn. Code Ann. § 65-4-204 prior to any Authority action on the Joint Application. On July 24, 2000, the Applicants filed a joint response opposing United Cities' Petition. On August 1, 2000, United Cities filed a Reply to the Applicants' Joint Response, in which United Cities provided additional support for its requests for intervention and a public hearing.

At the regularly scheduled Authority Conference held on August 15, 2000, the Directors voted unanimously to convene a contested case in this matter, appointed the General Counsel or his designee as Pre-Hearing Officer, and granted United Cities' Petition to Intervene. Because the filings by the Applicants were inconsistent with respect to the relief they were seeking from

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<sup>3</sup> *Joint Application of the City of Kingsport and Tensasco Pipeline Corporation for Approval of City Resolution and City Ordinance*, June 22, 2000, p. 1.

the Authority,<sup>4</sup> the Directors ordered the Applicants to file an amended application to clarify whether Tensasco was seeking a certificate of public convenience and necessity and to describe the geographical area in which Tensasco was seeking approval.<sup>5</sup>

On October 12, 2000, the Applicants filed an *Amendment to and Clarification of the Joint Application of the City of Kingsport and Tensasco Pipeline Corporation for Approval of City Resolution* ("Amended Application"). By this filing, the Applicants revised their request to seek approval in this docket only of the City Resolution pursuant to Tenn. Code Ann. § 65-4-107.<sup>6</sup> The Applicants stated that they would not seek approval of Kingsport Ordinance No. 4776 in this docket, but instead would seek approval of that Ordinance in a separate docket.<sup>7</sup> In addition, Tensasco withdrew its request for approval of a CCN. The Applicants specifically requested

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<sup>4</sup> The City Resolution, City Ordinance, and the request for a CCN as set forth in the Joint Application, each specify a different scope of service by Tensasco. The City Resolution states that natural gas will be transported to "large volume industrial customers such as Eastman Chemical Company." City Resolution, May 2, 2000, p. 2. The City Ordinance grants to Tensasco a franchise to

import, transport, distribute and sell Gas:

(1) to the City and inhabitants, institutions and businesses thereof for domestic, commercial, industrial and institutional uses and any such other purposes for which it is or may hereafter be used; and

(2) through the City to inhabitants, institutions and businesses outside the corporate boundaries for domestic, commercial, industrial and institutional uses and any such other purposes for which it is or may hereafter be used.

City Ordinance, June 6, 2000, p. 2. The Joint Application states:

Based on the approval of the Resolution and Ordinance, TPC requests pursuant to TCA Section 65-4-207 that the Authority grant certificate authority to TPC in Sullivan County and that such authority be in full accordance with all terms and conditions of the Resolution, the Ordinance, and of TPC's existing certificate.

The City of Kingsport and Tensasco Pipeline Corporation request that this matter be set for hearing as required by TCA Section 65-4-107 . . .

Joint Application, June 22, 2000, p. 1.

<sup>5</sup> The Authority's *Order Granting Intervention to United Cities and Appointing Pre-Hearing Officer* was entered on September 20, 2000.

<sup>6</sup> *Amendment to and Clarification of the Joint Application of the City of Kingsport and Tensasco Pipeline Corporation for Approval of City Resolution*, October 12, 2000, p. 1.

<sup>7</sup> *Id.*, p. 2.

that the Authority set this matter for hearing “as required by T.C.A. Section 65-4-107” and approve the City Resolution, finding that it is “necessary and proper for the public convenience and properly conserves the public interest . . . .”<sup>8</sup>

In its response to the Amended Application filed on October 19, 2000, United Cities questioned the sufficiency of the amendment, asserting that due to the inconsistent statements in the City Resolution and City Ordinance, the amendment continues to leave uncertain the scope of the proposed service. Specifically, United Cities stated that, while the Amendment “attempts to separate the Kingsport resolution and ordinance,” it ignores the fact that the resolution and ordinance are “inextricably linked” because the resolution references the franchise agreement which is a part of the ordinance.<sup>9</sup> Further, United Cities asserted that the Amended Application does not specify the type of service Tensasco will provide or the customers it intends to serve.<sup>10</sup> Nevertheless, United Cities stated that if certain ambiguities surrounding the Amended Application are resolved, it would not object to “TRA approval of all parts of the May 2, 2000 Kingsport resolution with the exception of paragraph 3 of page 2 of the resolution, which specifically references the franchise agreement embodied in the subsequently enacted ordinance.”<sup>11</sup>

Following the filing of the Amended Application and Response, the parties entered into discussions in an effort to resolve United Cities’ objections. During a telephonic status conference held on November 17, 2000, the parties agreed to participate in a Settlement

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<sup>8</sup> *Id.*, p. 2.

<sup>9</sup> *United Cities Gas Company’s Response to Amendment to and Clarification of Joint Application of the City of Kingsport and Tensasco Pipeline Corporation for Approval of City Resolution*, October 19, 2000, p. 3.

<sup>10</sup> *Id.*, p. 4.

<sup>11</sup> *Id.*, p. 5 (Emphasis removed.) The City Resolution provides: in Paragraph 3:

That the City and Tensasco will enter into a franchise agreement similar to the agreement the City has with the present natural gas franchisee of Kingsport which will be subject to approval of the Tennessee Regulatory Authority and this resolution is not to be construed to prohibit such agreement. (May 2, 2000 City Resolution, p. 2.)

Conference for the purpose of negotiating remaining disputed issues and entering into a joint stipulation which would remove United Cities' opposition to the Amended Application. A Settlement Conference was held in Nashville, Tennessee on November 27, 2000, conducted by the Pre-Hearing Officer. The Conference was attended by attorneys and representatives of Tengasco and United Cities. As a result of negotiations, the parties reached a tentative agreement on their disputed issues. On December 1, 2000, the parties filed for approval a Joint Stipulation incorporating the terms of the agreement reached at the Settlement Conference. A copy of the Joint Stipulation is attached to this Order as Exhibit A.

The Joint Stipulation provides that Tengasco may construct its pipeline within the City of Kingsport,

for the exclusive purpose of providing intrastate natural gas, pursuant to the pilot program statute (Tenn. Code Ann. § 65-28-103), to large industrial customers within the City of Kingsport that have previously been served by an interstate pipeline.<sup>12</sup>

The Joint Stipulation does not authorize approval of the City Ordinance or the "franchise agreement" mentioned therein and requires that Tengasco first obtain TRA approval, after notice to United Cities, before exercising any rights or beginning any service pursuant to the City Ordinance or the "franchise agreement" embodied in the City Ordinance. Based upon the foregoing conditions, United Cities agrees to withdraw its opposition to the approval of the May 2, 2000 City Resolution, with the exception of paragraph 3 of the Resolution, which refers to Kingsport and Tengasco entering into a "franchise agreement."<sup>13</sup>

On December 8, 2000, a Notice setting this case for Hearing on December 28, 2000 was sent to the parties and, pursuant to Tenn. Code Ann. § 65-4-203, to other persons potentially

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<sup>12</sup> Joint Stipulation, December 1, 2000, para. 2.

<sup>13</sup> *Id.*, para. 1.

interested in this matter. At a regularly scheduled Authority Conference held on December 19, 2000, the Directors authorized the Pre-Hearing Officer to preside as Hearing Officer over the Hearing in this matter and to render a decision on the merits as to the parties' request for approval of the Joint Stipulation and the Amended Application.

In advance of the Hearing date, Tengasco filed a *Motion for Determination on the Written Record and Cancellation of Hearing* on December 27, 2000, requesting that the Hearing Officer render a decision on the written record without the necessity of convening a hearing in this matter. The Hearing Officer, after being made aware of scheduling conflicts of the attorneys in the case, advised the parties that a hearing would be necessary and that he would consider the Motion as a request for continuance if the parties so desired. The parties expressed to the Hearing Officer that they wished to proceed with the Hearing as scheduled rather than postpone the proceedings. The agreement to proceed with the Hearing, as scheduled, rendered Tengasco's Motion moot.

### **Hearing**

The Hearing on the merits was held on December 28, 2000, with the following attorneys appearing on behalf of the parties:

Tengasco Pipeline Corporation - **D. Billye Sanders, Esq.** Waller, Lansden, Dortch & Davis, 511 Union Street, Suite 2100, P.O. Box 198966, Nashville, Tennessee 37219; and **Cary V. Sorenson, Esq.**, General Counsel, Tengasco, Inc., 603 Main Avenue, Suite 500, Knoxville, Tennessee 37902;

United Cities Gas Company – **Joe A. Conner, Esq.**, Baker, Donelson, Bearman & Caldwell, 1800 Republic Centre, 633 Chestnut Street, Chattanooga, Tennessee 37450-1800.

J. Michael Billingsley, attorney for the City of Kingsport, did not appear at the Hearing. Representatives of interested utility districts, municipalities or counties who were provided



notice of the Hearing pursuant to Tenn. Code Ann. § 65-4-203(b), did not attend. There were no members of the public-at-large in attendance at the Hearing.

During the Hearing, upon motion by counsel for Tensasco and without objection by counsel for United Cities, the following filings were made a part of the evidentiary record: the prefiled testimony of Robert Carter and the attachments thereto, the Amended Application, the City Resolution, the Joint Stipulation, the Applicants' responses to the Authority Data Requests, and the certified minutes of the May 1, 2000 Board of Mayor and Aldermen Work Session for the City of Kingsport and the May 2, 2000 Board of Mayor and Alderman Business Meeting. Robert Carter, president of Tensasco and State Representative Joseph Armstrong, a director of Tensasco, testified on behalf of the Applicants during the Hearing. Both witnesses for the Applicants were cross-examined by counsel for United Cities and responded to questions from the Authority. United Cities did not present any testimony during the Hearing. At the conclusion of the Hearing, the Hearing Officer approved the Joint Stipulation and took the remaining matters under advisement.

### **The Applicants' Proof**

Robert Carter testified as the Applicants' first witness. Mr. Carter described Tensasco's proposal to transport natural gas to Tennessee consumers such as Eastman Chemical Company ("Eastman") pursuant to the pilot program enacted by the Tennessee General Assembly. Mr. Carter testified that the only physical pipeline connection at Eastman is to East Tennessee Natural Gas Company, an interstate pipeline. Because there are no existing facilities, the construction of the proposed new facilities is necessary to enable Tensasco to deliver intrastate gas and thereby compete with deliveries of interstate gas from East Tennessee Natural Gas Company to certain industrial customers.<sup>14</sup>

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<sup>14</sup> See *Prefiled Direct Testimony of Tensasco Pipeline Corporation*, (Robert M. Carter) December 21, 2000, pp. 2-3.

In his pre-filed testimony, Mr. Carter described Tensasco's existing system and the new construction required in Hawkins County, Tennessee and in Kingsport, Tennessee. In his testimony during the Hearing, Mr. Carter clarified that the proposed pipeline serving Eastman will be connected to an existing pipeline that runs from the Swan Creek field in Hancock County and to Rogersville in Hawkins County. Tensasco will construct an additional line from Rogersville to the point where the Hawkins County line abuts the boundaries of the City of Kingsport in Sullivan County. Up to the point where it enters the City of Kingsport, the pipeline travels through the counties in which Tensasco is permitted to provide service under the CCN obtained in TRA Docket No. 98-00156. From the Hawkins/Sullivan county line, the proposed pipeline will travel entirely within the city limits of Kingsport to Eastman. According to the testimony of Mr. Carter, Tensasco's pipeline does not cross any part of Sullivan County that is not within in the City of Kingsport.<sup>15</sup>

Representative Armstrong testified regarding the relationship between Tensasco and Tensasco, Inc. and provided specific cost information regarding the proposed delivery of gas to Eastman. Representative Armstrong first testified that Tensasco is a wholly-owned subsidiary of Tensasco, Inc.<sup>16</sup> The gas being provided to the Eastman Chemical Plant will come from the Tensasco, Inc. Swan Creek fields and will be transported by Tensasco to Eastman.<sup>17</sup> Tensasco will be charging the transportation costs back to Tensasco, Inc., the producer.<sup>18</sup> Tensasco, Inc. will be the customer of Tensasco and will pay Tensasco the tariff rate for transporting the gas.<sup>19</sup> The producer, Tensasco, Inc. will issue a bill to Eastman.<sup>20</sup> The rates that Tensasco, Inc. will

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<sup>15</sup> See Transcript of Hearing, December 28, 2000, p. 19. (Testimony of Mr. Robert M. Carter, President of Tensasco).

<sup>16</sup> See Transcript of Hearing, December 28, 2000, p. 29 (Testimony of State Representative Joseph Armstrong).

<sup>17</sup> *Id.*, p. 29.

<sup>18</sup> *Id.*, p. 29.

<sup>19</sup> *Id.*, p. 30.

<sup>20</sup> *Id.*, p. 29.

charge Eastman will be lower than the pipeline rates that Eastman is currently paying. According to Representative Armstrong, Eastman will save in demand charges and transportation charges by purchasing Tennessee gas as opposed to buying gas from the interstate pipeline.<sup>21</sup>

As to the issues of public convenience and public interest, Mr. Carter testified that severance taxes imposed by the State of Tennessee will be due on a larger volume of production with the sale of gas to Eastman. A portion of the taxes paid by Tengasco will go to the community from which the gas is produced for local uses. Accordingly, the sale of gas to Eastman as proposed will benefit not only Tengasco and Eastman but also the residents of Hancock County where the fields are located.<sup>22</sup>

Mr. Carter also provided information regarding the content and passage of the City Resolution. Along with Cary Sorenson, counsel for Tengasco, Mr. Carter attended the meeting of the Board of Mayor and Aldermen of the City of Kingsport on May 2, 2000. The Minutes from the Board of Mayor and Aldermen Work Session reveal that Mr. Sorenson stated:

Tengasco would not be taking residential customers away from established gas companies in the City, but would only serve those large volume customers who do not have gas provisions authorized by the Pilot Program.<sup>23</sup>

The Resolution was presented by the City Attorney Michael Billingsley and passed unanimously. A representative of Eastman was present at the working session of the Mayor and Board of Alderman held on May 1, 2000.<sup>24</sup>

In Data Requests to the parties, the Authority asked specific questions of the Applicants relating to Kingsport's determination that the public necessity requires a competing natural gas pipeline company in the City of Kingsport. The Applicants responded:

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<sup>21</sup> *Id.*, p. 28.

<sup>22</sup> See *Prefiled Direct Testimony of Tengasco Pipeline Corporation*, (Robert M. Carter) December 21, 2000, p. 5.

<sup>23</sup> See Minutes Board of Mayor and Aldermen Work Session, May 1, 2000, p. 3

<sup>24</sup> *Id.*, p. 6.

The City of Kingsport has determined in the resolution that the public necessity required a natural gas pipeline company to compete with gas delivered from the East Tennessee Natural Gas Company, an interstate pipeline and the only physical source of natural gas to the City. The City determined that such competition was needed because the competition would benefit its citizens by providing an alternate supply, and resulting competition would provide those of its corporate citizens purchasing gas from suppliers delivering the gas from an interstate pipeline, with at least the possibility of better overall choices in rates along with the certainty of the alternative source for natural gas.<sup>25</sup>

The record also reveals that Kingsport's finding of public necessity would not be altered if only a single customer in Kingsport is served by Tengasco's pipeline.

. . . the Resolution expressly authorizes construction to other large volume customers that may be in the same position as Eastman Chemical Company. In any event, the competitive benefits resulting to a single customer would nevertheless fully support and would not alter the findings made in the Resolution . . .”<sup>26</sup>

At the Hearing, Mr. Carter testified that at present time Tengasco's only customer to which the Resolution applies is Eastman Chemical Company.<sup>27</sup> The Applicants explained however, in response to Data Requests that the Resolution authorizes construction of a pipeline to serve other large volume industrial customers who are “in the same position as” Eastman, i.e. who are currently served by the interstate pipeline.<sup>28</sup> Notwithstanding the City Resolution's specific reference to the construction of a pipeline, the Applicants stated that the Resolution is to be construed as authorizing utility service, including transportation service.<sup>29</sup>

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<sup>25</sup> See *Tengasco Pipeline Corporation's and the City of Kingsport's Answers to Questions of the Tennessee Regulatory Authority*, December 4, 2000, p. 3.

<sup>26</sup> *Id.*

<sup>27</sup> Transcript of Hearing, December 28, 2000, p. 25.

<sup>28</sup> See *Tengasco Pipeline Corporation's and the City of Kingsport's Answers to Questions of the Tennessee Regulatory Authority*, December 4, 2000, p. 3.

<sup>29</sup> *Tengasco Pipeline Corporation's and the City of Kingsport's Answers to Supplemental Questions of the Tennessee Regulatory Authority Staff*, December 7, 2000, p. 2.

### **The Applicants' Request**

In the Joint Application filed on June 22, 2000, the Applicants sought TRA approval of the City Resolution and City Ordinance pursuant to Tenn. Code Ann. § 65-4-107. The Applicants also asked the Authority to grant Tensasco a CCN, under Tenn. Code Ann. § 65-4-207, to provide service in Sullivan County. The Applicants asserted that the CCN requirements in Tenn. Code Ann. § 65-4-201 do not apply to Tensasco's request because of the declaration of public necessity in the City Resolution. According to the Applicants, the City Resolution's declaration that the "public necessity" requires the proposed service, brings Tensasco's request under Tenn. Code Ann. § 65-4-207(a). The Applicants argued that under Tenn. Code Ann. § 65-4-207(a), "...where a City has determined by resolution or ordinance that a competing service is necessary, *the certificate provisions of Sections 201-206 do not apply.*"<sup>30</sup> The Applicants connected this argument to their request for approval pursuant to Tenn. Code Ann. § 65-4-107 as follows:

The Legislature could have made the hearing required under Section 65-4-107 identical in form to a certificate proceeding but did *not* do so, and instead affirmatively stated that certificate procedures did not apply (Section 65-4-207) and directed the Authority (Section 65-4-107) to approve franchises and other privileges upon making the findings stated therein which are supported by TPC's and City of Kingsport's Joint Application and to which United Cities has not made any objection.<sup>31</sup>

The Applicants subsequently withdrew the request for a CCN in their Amended Application by stating the following:

... TPC hereby clarifies that by this Amendment and Clarification it is not seeking in this docket an amendment to its certificate in Docket No. 98-00156, nor is it seeking a new certificate applicable to service in any portion of Sullivan County or of any other county. TPC requests only that the Resolution of the City of the Kingsport be approved as stated above. Consequently, according to T.C.A. Section 65-4-207, the certification

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<sup>30</sup> See *Joint Response of the City of Kingsport and Tensasco Pipeline Corporation to United Cities Gas Company's Petition to Intervene and Application for Public Hearing*, July 24, 2000, p. 2. (Emphasis in original).

<sup>31</sup> *Id.*

provisions of T.C.A. Section 65-4, part 2 do not apply when the local option of the municipality is invoked.<sup>32</sup>

The Applicants now rely exclusively on Tenn. Code Ann. § 65-4-107, with the City Resolution as the basis to permit them to serve the Eastman Chemical Plant and other large industrial customers within the City of Kingsport without either having to obtain a CCN or amend Tensasco's existing CCN.

### **Applicable Statutes**

Notwithstanding the fact that the Amended Application no longer seeks the issuance of a CCN to Tensasco for Sullivan County, the Hearing Officer finds it necessary to examine the statutes governing the granting of a CCN to ascertain whether the requirements of these statutes are applicable to the service proposed in the Amended Application. Irrespective of the Applicants' assertions and the nature of their request, the issuance of a CCN could be required if the facts presented warrant such action. The Hearing Officer must also determine at the outset the interrelationship of the following statutes which come into play in considering the Amended Application: Tenn. Code Ann. §§ 65-4-201, 65-4-207(a), 65-4-107 and 65-28-103(b).

Tenn. Code Ann. § 65-4-201 sets forth the statutory requirements which must be met by a public utility seeking Authority approval for a CCN. Under Tenn. Code Ann. § 65-4-201, a public utility is required to obtain a CCN before it may "establish or begin the construction of, or operate any line, plant, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein."<sup>33</sup> The approval of a CCN requires a determination by the Authority, after written application and hearing, that "the present or future public convenience and necessity require or will require such construction, establishment, and operation."<sup>34</sup>

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<sup>32</sup> Amended Application, p.2.

<sup>33</sup> Tenn. Code Ann. § 65-4-201(a).

<sup>34</sup> *Id.*

Tenn. Code Ann. § 65-4-207 provides as follows:

**Law inapplicable at local option.** (a) The provisions of *this part* do not apply where a municipality or county by resolution or ordinance declares that a public necessity requires a competing company in that municipality or county.<sup>35</sup>

As used in Tenn. Code Ann. § 65-4-207(a), the words “this part” refer to Tenn. Code Ann. §§ 65-4-201 *et seq.* (Part 2, Chapter 4, Title 65).<sup>36</sup> Thus, on its face, Section 65-4-207(a) provides that the declaration of public necessity in the resolution or ordinance renders Sections 65-4-201 through 206 inapplicable.

Relying on Tenn. Code Ann. § 65-4-107, the Amended Application seeks Authority approval of the privilege or franchise granted to Tengasco by the City Resolution. Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that “such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest.”<sup>37</sup> Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority “shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . . .”<sup>38</sup>

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<sup>35</sup> Tenn. Code Ann. § 65-4-207(a). (Emphasis supplied.)

<sup>36</sup> Tennessee Code Annotated contains a User’s Guide in Volume 1 that provides information regarding a number of topics designed to assist the reader. Under the topic “Numbering System” the User’s Guide describes how statutory sections are organized according to title, chapter and part:

The number in the first tier represents the title; the second tier represents the chapter; and the last tier represents the part and section. (Illustration Omitted). For example, § 4-29-110 is the tenth section in the first part of chapter 29 of title 4. Section 4-29-203 is the third section in the second part of chapter 29 of title 4.

User’s Guide, Tenn. Code Ann., Vol. 1, p. x (1980 Replacement). *See also, In re Harris*, No. 01A01-9901-CV-00017, 1999 WL 54821 at 2 (Tenn. Ct. App., July 29, 1999, unpublished).

<sup>37</sup> Tenn. Code Ann. § 65-4-107.

<sup>38</sup> Tenn. Code Ann. § 65-4-107.

While the declaration of public necessity in a resolution or ordinance pursuant to Tenn. Code Ann. § 65-4-207 may make Tenn. Code Ann. § 65-4-201(a) inapplicable, the requirement of Authority approval of a privilege or franchise under Tenn. Code Ann. § 65-4-107 remains in full force and effect. A privilege or franchise granted by the State or a political subdivision thereof to a public utility is not valid until approved by the Authority, after a hearing and a determination of public convenience and necessity and the public interest.

As a result of the Amended Application, the “franchise agreement” between Tengasco and Kingsport referred to in the City Ordinance is no longer before the Authority in this docket. The Applicants state that, while the “franchise agreement” remains in effect between Tengasco and Kingsport, it will be submitted to the Authority for approval at a later time.<sup>39</sup> That “franchise agreement” provides for a much broader scope of service than agreed to by the parties in the Joint Stipulation. In fact, the Joint Stipulation specifically excludes from the City Resolution any reference to the “franchise agreement.”<sup>40</sup>

Approval under Tenn. Code Ann. § 65-4-107 is not limited solely to an agreement that may be designated as a “franchise agreement,” but extends, instead, to any “privilege or franchise” granted by the state or any political subdivision of the state to a public utility. The right to construct facilities and to provide service as established in the City Resolution and acknowledged in the Joint Stipulation is such a “privilege or franchise.”

The Applicants assert that the transportation of natural gas, as requested in the Amended Application, falls within the purview of Tenn. Code Ann. § 65-38-103(b)(1) which, in part, provides:

As a pilot project through the end of the year 2001, and notwithstanding any state or local law to the contrary, any intrastate natural gas pipeline corporation, subject to regulation by the Tennessee regulatory authority as a

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<sup>39</sup>Amended Application, p. 2.

<sup>40</sup> Joint Stipulation, December 1, 2000, para. 1.



public utility, may transport natural gas to end users in Tennessee only if such natural gas is produced from Tennessee wells located in any county contained within the second, fourth, fifth, sixth, seventh or twelfth [sic] senatorial districts, and/or the smallest county by population located in the fifteenth senatorial district, as these districts exist on June 17, 1999, and only if the end users of such natural gas are located in the above referenced counties.<sup>41</sup>

While the Applicants do not directly question the requirement of Authority approval, the arguments put forth by the parties in this proceeding have suggested that reliance on the pilot program statute, Tenn. Code Ann. § 65-28-103(b), could result in a less stringent review and approval process. Both parties have also asserted, most recently in the *Motion for Determination on the Written Record*, that a hearing would not be required for the purpose of making a determination on the Amended Application.

#### **Findings of Fact and Conclusions of Law**

After reviewing the record in this case, considering the testimony of the witnesses, and applying the appropriate statutes to the facts, the Hearing Officer makes the following findings of fact and conclusions of law:

**1. Based upon the facts as presented in this case, Tensasco meets the criteria set forth in the pilot program statute, Tenn. Code Ann. § 65-28-103(b) to transport natural gas to end-users in Tennessee.**

Mr. Carter's testimony described in detail Tensasco's proposal to transport natural gas to Eastman pursuant to the pilot program enacted by the Tennessee General Assembly. Further, in response to Data Requests, the Applicants described how Tensasco qualifies to participate in the pilot program by meeting the criteria in Tenn. Code Ann. § 65-28-103(b):

Tensasco Pipeline Corporation, is a "pipeline corporation" as described in TCA Section 65-28-101 [Supp. 2000], and as such shall be charged with "all duties, responsibilities, and liabilities imposed upon public utility corporations by the laws of this state, and be subject to the Tennessee regulatory authority." TCA Section 65-28-103(a) [Supp. 2000]. By virtue of Section 65-28-103(a), Tensasco Pipeline Corporation is subject to

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<sup>41</sup> Tenn. Code Ann. § 65-28-103(b)(1).

regulation as a public utility under TCA Section 65-4-101 and other sections imposing duties, responsibilities, and liabilities upon public utilities as to the proposed service to Eastman Chemical and other large volume industrial customers pursuant to Kingsport City Resolution No. 2000-92. Tengasco Pipeline Corporation is also an “intrastate natural gas” pipeline corporation described in Subsection (b) of the statute just quoted, the Pilot Program. As a consequence of being a pipeline corporation expressly subject to regulation as a public utility under Section 65-28-103(a), and also being an “intrastate natural gas” pipeline corporation, Tengasco Pipeline Corporation is therefore an intrastate natural gas pipeline corporation subject to regulation by the Tennessee regulatory authority as a public utility and is expressly eligible to transport intrastate gas under Section 65-28-103(b).<sup>42</sup>

The Hearing Officer finds, based upon the record in this case, that the service proposed by Tengasco to the Eastman Chemical Plant falls within the purview of the Pilot Program Statute, Tenn. Code Ann. § 65-28-103(b).

**2. Tenn. Code Ann. § 65-28-103(b) does not exempt a qualifying intrastate natural gas pipeline corporation from having to obtain TRA approval of the “privilege or franchise” granted to Tengasco by the City of Kingsport.**

The Pilot Program Statute does not preclude, limit or restrict the Authority from carrying out its responsibilities under Tenn. Code Ann. § 65-4-201(a) and § 65-4-107. The Authority’s role is not restricted by Tenn. Code Ann. § 65-28-103(b). The phrase “state or local law to the contrary” refers to a law which would prohibit the transportation of natural gas but for the Pilot Program Statute. Tenn. Code Ann. § 7-82-301(2)(A) is such a “law to the contrary” because it grants exclusive rights for natural gas service to utility districts and would absolutely bar such service in the absence of Tenn. Code Ann. § 65-38-103(b)(1). Tenn. Code Ann. § 65-4-107 is not a “law to the contrary” that would absolutely prevent the proposed service without the exception created by the Pilot Program Statute. Neither is Tenn. Code Ann. § 65-4-201(a). Furthermore, the only way to give meaning to the statement that the natural gas corporation

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<sup>42</sup> See *Tengasco Pipeline Corporation’s and the City of Kingsport’s Answers to Questions of the Tennessee Regulatory Authority*, December 7, 2000, p. 4.

referred to in the Pilot Program Statute is “subject to regulation by the Tennessee regulatory authority” is to conclude that the statutes under which the Authority regulates the transportation of natural gas, such as Tenn. Code Ann. § 65-4-107, remain in full effect.

**3. A CCN is not required for the construction of the pipeline or the provision of service by Targasco to the Eastman Chemical Plant.**

Based on the testimony of Targasco president Robert Carter and the Applicants’ responses to Authority Data Requests, the Hearing Officer finds that the pipeline being constructed by Targasco to serve Eastman runs from Hancock County through Hawkins County. In accordance with the Authority’s Orders of July 18, 1998 and May 18, 1999, Targasco has already obtained a CCN in these counties. Targasco’s pipeline then extends into the City of Kingsport, which is in Sullivan County. Targasco has not obtained a CCN for Sullivan County. Nevertheless, applying Tenn. Code Ann. § 65-4-207(a) and relying upon the City Resolution, Targasco would not need an additional CCN for the construction of the pipeline or the transportation of natural gas in Sullivan County. The record shows that Targasco’s pipeline in Kingsport will not cross any part of Sullivan County which is outside the city limits of Kingsport. The Hearing Officer finds that Targasco does not need a CCN for Sullivan County to construct the pipeline and provide natural gas service, as proposed in the Amended Application, so long as Targasco constructs the pipeline and provides service solely within the city limits of Kingsport.

**4. While Tenn. Code Ann. § 65-4-207 renders inapplicable the provisions of Tenn. Code Ann. §§ 65-4-201 through 206, it does not preempt Tenn. Code Ann. § 65-4-107.**

As discussed above, Tenn. Code Ann. § 65-4-207(a) applies only to Part 2, Chapter 4, Title 65. The City Resolution renders inapplicable only the provisions of Part 2, not Part 1, of Chapter 4, Title 65. Therefore, the requirement that the Authority make certain determinations

in considering whether to approve a privilege or franchise under Tenn. Code Ann. § 65-4-107 remains unaffected by a declaration of public necessity pursuant to Tenn. Code Ann. § 65-4-207(a). While a reliance on Tenn. Code Ann. § 65-4-207(a) may eliminate the need for a hearing and determinations required for the issuance of a CCN under § 65-4-201, it does not remove the necessity of a hearing or determinations as required by Tenn. Code Ann. § 65-4-107. Further, the Authority's role under Tenn. Code Ann. § 65-4-107 is more than merely adopting the finding of public necessity contained in the City Resolution. The Hearing Officer concludes that the declaration of public necessity in the City Resolution, while conclusive as to Tenn. Code Ann. § 65-4-207(a), does not dictate a finding of public necessity and convenience under Tenn. Code Ann. § 65-4-107. To the contrary, Tenn. Code Ann. § 65-4-107 specifically requires that the Authority, after a hearing, make the determination that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest . . ."<sup>43</sup> While the City Resolution is evidence and may be persuasive, the Hearing Officer does not consider it a substitute for the Authority's determination as specifically required by Tenn. Code Ann. § 65-4-107. Moreover, Tenn. Code Ann. § 65-4-107 sets forth its own criteria separate and apart from Part 2, Chapter 4, Title 65, and requires a hearing as part of the process for approval of a privilege or franchise.

**5. The Applicants have made a sufficient showing that the privilege or franchise granted to Tengasco by the City of Kingsport is "necessary and proper for the public convenience and properly conserves the public interest" pursuant to Tenn. Code Ann. § 65-4-107.**

The Hearing Officer finds that based on the record in this case, the privilege or franchise granted by Kingsport to Tengasco complies with the requirements of Tenn. Code Ann. § 65-4-107. The Applicants have sufficiently demonstrated that the privilege or franchise is "necessary

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<sup>43</sup> Tenn. Code Ann. § 65-4-107.

and proper for the public convenience” and that it “properly conserves the public interest” as evidenced by testimony, responses to data requests and the City Resolution, a copy of which is attached to this Order as **Exhibit B**.

As set forth above, the Applicants provided testimony which demonstrated the beneficial nature of the proposed service not only to Eastman and potential customers, but also to the citizens of the city of Kingsport and Hancock County through competition, lower costs and tax revenues. Further, the Joint Stipulation evidences that the only Intervenor in this case, United Cities, supports the declaration of public necessity in the City Resolution and does not oppose Tengasco’s proposed pipeline construction or service to the large volume industrial customers within the City of Kingsport who have been served from the interstate pipeline.

**6. In the event that Tengasco desires to provide natural gas service to end-users outside of the city limits of Kingsport through the use of the pipeline constructed within the city limits of Kingsport, Tengasco will seek additional authority from the TRA.**

The City Resolution grants a privilege or franchise to Tengasco within the city limits of Kingsport. Further, the Applicants have confirmed this geographical limitation:

The geographical area TPC proposes to serve pursuant to the approval requested in this docket is the geographical area within the city limits of the City of Kingsport, Tennessee pursuant to the Resolution. No other geographical area is proposed to be served by virtue of the relief requested by TPC in this docket.<sup>44</sup>

Tengasco’s president testified during the Hearing that Tengasco would return to the Authority for approval if it sought to serve large industrial customers outside of the city limits of Kingsport.<sup>45</sup>

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<sup>44</sup> Amended Application, p. 2.

<sup>45</sup> Transcript of Hearing, (December 28, 2000), p. 24.

In addition, the parties, by way of their Joint Stipulation, have agreed that approval of the City Resolution does not constitute approval of the City Ordinance or the franchise agreement contained therein.<sup>46</sup> Further, the parties specifically stipulated that:

Should Tengasco desire to begin service pursuant to the June 6, 2000 Kingsport ordinance or the franchise agreement embodied in that ordinance, Tengasco must first obtain TRA approval before exercising its rights under said ordinance, including without limitation, the right to construct facilities or lay pipe for the purposes of serving or preparing to serve pursuant to said ordinance or franchise agreement.<sup>47</sup>

**IT IS THEREFORE ORDERED THAT:**

1. Based upon the findings and conclusion set forth herein, the Joint Stipulation and the City of Kingsport Resolution, as amended, attached to this Order as Exhibit A and Exhibit B, respectively, are hereby approved and are incorporated in this Order as if fully rewritten herein.
2. The privilege or franchise granted to Tengasco Pipeline Corporation by the City of Kingsport, as embodied in the City of Kingsport Resolution, as amended, is hereby approved.
3. In the event that Tengasco desires to provide natural gas service to end-users outside of the city limits of Kingsport through the use of the pipeline constructed within the city limits of Kingsport, Tengasco shall file a petition with the Tennessee Regulatory Authority requesting such additional authority and shall notify all interested parties upon the filing of the petition.
4. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing Officer within fifteen (15) days from the date of this Order.

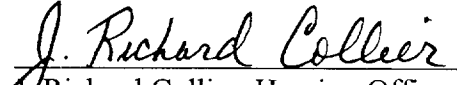
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<sup>46</sup> Joint Stipulation, December 1, 2000, Para. 3.


<sup>47</sup> Joint Stipulation, December 1, 2000, Para. 4.

5. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

6. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer, may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

  
Richard Collier, Hearing Officer

ATTEST:

  
K. David Waddell, Executive Secretary

**BEFORE THE TENNESSEE REGULATORY AUTHORITY, TR**  
**NASHVILLE, TENNESSEE**

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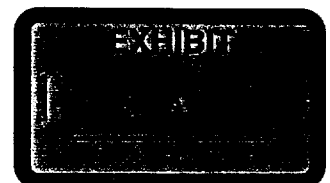
IN RE: )  
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JOINT APPLICATION OF THE CITY OF )  
KINGSPORT AND TENGASCO PIPELINE ) Docket No. 00-00537  
CORPORATION FOR APPROVAL OF )  
CITY RESOLUTION AND CITY )  
ORDINANCE )  
 )  
 )

**JOINT STIPULATION**

The parties to this matter met at the Tennessee Regulatory Authority ("TRA") in a settlement conference conducted by TRA general counsel Richard Collier on November 27, 2000. During the settlement conference, the parties agreed to the following joint stipulation, the terms of which were announced at the conclusion of the settlement conference. Accordingly, the City of Kingsport, Tengasco Pipeline Corporation ("Tengasco") and United Cities Gas Company ("UCG") submit the following joint stipulation:

1. UCG agrees to withdraw its objection to the amended joint application of Tengasco and the City of Kingsport for approval of the May 2, 2000 Kingsport resolution No. 2000-092, with respect to all portions of the resolution except Paragraph 3 of page 2 of the resolution. Tengasco and the City of Kingsport will move for immediate approval of the May 2, 2000 Kingsport resolution No. 2000-092 by the TRA with the exception of the portion of the resolution set forth in Paragraph 3 of page 2.

2. Pursuant to the terms of that resolution, Tengasco is authorized to construct a pipeline within the City of Kingsport for the exclusive purpose of providing intrastate natural gas, pursuant to the pilot program statute (Tenn. Code. Ann. § 65-28-103), to large volume





industrial customers within the City of Kingsport that have previously been served by an interstate pipeline.

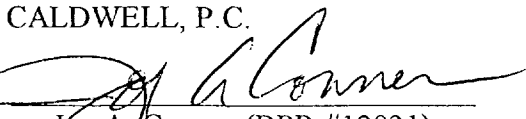
3. The TRA incorporating this Joint Stipulation and approving the resolution shall not be construed as approving or authorizing in any way the June 6, 2000 Kingsport ordinance or the franchise agreement embodied in that ordinance. The June 6, 2000 ordinance has not been approved by the TRA pursuant to §65-4-107.

4. Should Tensasco desire to begin service pursuant to the June 6, 2000 Kingsport ordinance or the franchise agreement embodied in that ordinance, Tensasco must first obtain TRA approval before exercising its rights under said ordinance, including without limitation, the right to construct facilities or lay pipe for the purposes of serving or preparing to serve pursuant to said ordinance or franchise agreement.

5. Tensasco shall notify UCG of any future filing with the TRA by Tensasco involving the June 6, 2000 Kingsport ordinance or the franchise agreement embodied in that ordinance. On the day of any such filing by Tensasco with the TRA, written notice is to be sent by certified mail to UCG's legal counsel, Joe A. Conner at Baker, Donelson, Bearman & Caldwell, P.C., 1800 Republic Centre, 633 Chestnut Street, Chattanooga, Tennessee 37450-1800.

BAKER, DONELSON BEARMAN  
& CALDWELL, P.C.

BY:



Joe A. Conner (BPR #12031)  
Misty Smith Kelley (BPR #19450)

1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450-1800  
Telephone: (423) 756-2010

Attorneys for United Cities Gas Company

CITY OF KINGSPORT

By: J. Michael Billingsley *with permission*  
J. Michael Billingsley  
City Attorney, City of Kingsport  
225 West Center Street  
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Attorney for the City of Kingsport

WALLER LANSDEN DORTCH &  
DAVIS

By: D. Billye Sanders  
D. Billye Sanders  
511 Union Street, Suite 2100  
P.O. Box 198966  
Nashville, TN 37219  
Attorney for Tengasco Pipeline Corporation

RESOLUTION NO. 2000-092

A RESOLUTION TO AUTHORIZE CONSTRUCTION OF  
INTRASTATE NATURAL GAS PIPELINE FACILITIES

WHEREAS, the City of Kingsport and its citizens are entitled to receive the benefits of competition between competitors in the transportation of natural gas to large volume industrial users in the City of Kingsport that have been served by gas from East Tennessee Natural Gas Pipeline Company, an interstate pipeline; and

WHEREAS, the State of Tennessee has enacted a statute establishing a Pilot Program, T.C.A. § 65-28-103, effective June 17, 1999 whereby natural gas produced in Tennessee may be transported by an intrastate natural gas pipeline to customers which have been served by gas from an interstate pipeline; thereby providing transportation competition with such interstate pipeline; and

WHEREAS, the Eastman Chemical Company of Kingsport, Tennessee desires to purchase and has entered into a contract to purchase large volumes of natural gas produced in Tennessee to be transported in accordance with that Pilot Program by TENGASCO Pipeline Corporation, an intrastate natural gas pipeline, commencing when facilities are built to the industrial complex of Eastman in Kingsport, Tennessee and to thereby provide substantial savings to Eastman Chemical Company over the life of the gas purchase contract; and

WHEREAS, TENGASCO Pipeline Corporation is a natural gas pipeline corporation subject to the jurisdiction of the Tennessee Regulatory Authority as a public utility and holds a certificate of public convenience and necessity as a natural gas pipeline carrier in Hancock, Claiborne, and Hawkins Counties, Tennessee; and

WHEREAS, TENGASCO Pipeline Corporation is not intending to compete and will not install facilities to compete with the franchisee of Kingsport for transportation or sale of natural gas to any customer other than large volume customers that are specifically entitled to the benefit of the Pilot Program by having been served by an interstate pipeline; and

WHEREAS, TENGASCO Pipeline Corporation intends to construct on rights-of-way it will acquire within the city limits of Kingsport approximately three miles of 12-inch steel pipeline facilities and related lines and facilities interconnecting with other facilities of TENGASCO Pipeline Corporation as required to deliver natural gas from the Swan Creek field in Hancock County, Tennessee to large volume customers including Eastman Chemical Company in accordance with the Pilot Program.

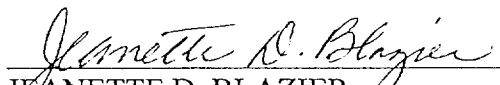
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is an exact & true copy.




BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF KINGSFORT, TENNESSEE, AS FOLLOWS:

1. That a public necessity requires a competing natural gas pipeline company in the City of Kingsport for the transportation of natural gas produced in the State of Tennessee to large volume industrial customers including Eastman Chemical Company in accordance with T.C.A. § 65-28-103.
2. That the public necessity requires that TENGASCO Pipeline Corporation construct within the city limits of Kingsport those pipeline facilities required to transport natural gas produced in Tennessee to large volume industrial customers such as Eastman Chemical Company in accordance with the Pilot Program contained in T.C.A. § 65-28-103 and such construction is approved.
3. That the City and TENGASCO will enter into a franchise agreement similar to the agreement the City has with the present natural gas franchisee of Kingsport which will be subject to approval of the Tennessee Regulatory Authority and this resolution is not to be construed to prohibit such agreement.

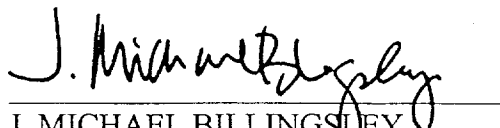
ADOPTED this the 2nd day of May, 2000.

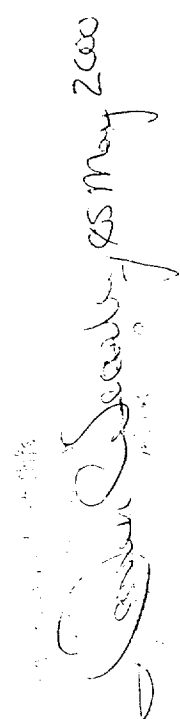
  
JEANETTE D. BLAZIER  
Mayor

ATTEST:

  
JAMES H. DEMMING  
City Recorder Deputy  
Warren C. Searby

APPROVED AS TO FORM:

  
J. MICHAEL BILLINGSLEY  
City Attorney

  
Warren C. Searby  
City Recorder Deputy  
2000